

**Department of State Health Services
Council Agenda Memo for State Health Services Council
November 18-19, 2015**

Agenda Item Title: Amendment to a rule concerning the Breast and Cervical Cancer Services (BCCS) Program

Agenda Number: 4.d

Recommended Council Action:

☐ For Discussion Only

☒ For Discussion and Action by the Council

Background:

The Women's Health Services Unit administers the BCCS Program. The program provides statewide breast and cervical cancer screening and diagnostic services to low income women who are unable to access the same care through other funding sources or programs. Additional services may include case management activities, technical assistance and training for contractors, information and education activities for the public and contractors, and surveillance and evaluation of the BCCS Program. The primary purpose of the program is to reduce mortality from breast and cervical cancer.

The BCCS Program has 36 contractors consisting of non-profit agencies, local health departments, hospitals, Federally Qualified Healthcare Centers, and local community health centers throughout Texas. During Fiscal Year 2014, the BCCS Program provided cancer screening and diagnostic services to approximately 33,600 women. The BCCS Program budget for Fiscal Year 2015 is approximately \$11,737,000, and is funded with federal, state general revenue, and donation funds.

Summary:

The purpose of the amendment is to revise rule language to describe which providers are eligible to apply and will be able to be reimbursed for providing services in the BCCS Program. The amendments are necessary to comply with Article II, Rider 72 of the General Appropriations Act for State Fiscal Years 2016 and 2017 (House Bill 1, 84th Legislature, Regular Session, 2015). Rider 72 specifies that BCCS funds may be used to compensate providers that satisfy the eligibility requirements for the Texas Women's Health Program (TWHP), except in very limited circumstances.

The amendment requires providers to comply with TWHP requirements in 25 TAC, Sections 39.33 and 39.38. The amendment allows DSHS to contract with providers for purposes of the BCCS Program that are not eligible to participate in the TWHP if DSHS is unable to locate a sufficient number of TWHP eligible providers in a certain region.

Key Health Measures:

DSHS has methodologies in place for provider recruitment in the event of a service gap in order to maintain statewide BCCS coverage. Factors considered may include:

- Distance clients must travel to receive services;
- Population in need by county/Health Service Region;
- Available funding; and
- Number, type, and capacity of potential providers.

These measures will be tracked by the program.

Summary of Input from Stakeholder Groups:

Stakeholder input has been gathered through e-mail and website communications throughout the rule development process. Two comments and two questions were received. One commenter stated no concerns were noted with the proposed changes. Another commenter stated that the proposed changes do not reflect the intent of House Bill 1 and provided suggested language. Two questions were received requesting to know when the proposed rules would be available for public comment.

Proposed Motion:

Motion to recommend HHSC approval for publication of rules contained in agenda item #4.d.

Approved by Assistant Commissioner/Director: Evelyn Delgado **Date:** 10/12/15

Presenter: Travis Duke **Program:** Director, Women's Health Services **Phone No.:** 512-776-2990

Approved by CPEA: Carolyn Bivens **Date:** 10/23/15

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 61. CHRONIC DISEASES
Subchapter C. BREAST AND CERVICAL CANCER SERVICES
Amendment §61.33

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §61.33, concerning the Breast and Cervical Cancer Services (BCCS) Program.

BACKGROUND AND PURPOSE

The BCCS Program provides access to high-quality breast and cervical cancer screening and diagnostic services for eligible Texas women who are unable to access the same care through other funding sources or programs. Services may include clinical breast examinations and mammograms to screen for breast cancer, and pelvic examinations and Pap tests to screen for cervical cancer. Diagnostic services and case management are also provided for women with abnormal breast or cervical cancer screening results.

The BCCS Program is the access point for women to apply for Medicaid for breast and cervical cancer in order to access cancer treatment. Services are provided through contracts with non-profit agencies, local health departments, hospitals, and community health centers.

The purpose of the amendment is to revise language describing which providers are eligible to apply and be reimbursed for providing services in the BCCS Program. The amendment is necessary to comply with Article II, Rider 72 (relating to the BCCS Program) of the General Appropriations Act for State Fiscal Years 2016 and 2017 (House Bill 1, 84th Legislature, Regular Session, 2015, art. II, at II-72). Article II, Rider 72 specifies that BCCS funds may be used to compensate only providers that satisfy the eligibility requirements for the Texas Women's Health Program (TWHP), except in very limited circumstances. Accordingly, BCCS providers must be eligible to participate in the TWHP and comply with the relevant TWHP statute, which can be found in Texas Human Resources Code, §32.024(c-1), and rules in 25 Texas Administrative Code (TAC), §39.33 and §39.38. Rider 72 also enables the department to compensate local providers, for BCCS purposes, that are not eligible to participate in the TWHP if the department is unable to locate a sufficient number of TWHP eligible providers in a certain region.

SECTION-BY-SECTION SUMMARY

Proposed new §61.33(a) requires BCCS providers to be eligible to participate in the TWHP in order to participate in BCCS and to be reimbursed for services provided in the BCCS Program. Specifically, §61.33(a) requires BCCS providers to comply with the TWHP requirements set forth under 25 TAC, Subchapter B, §39.33 (relating to Definitions) and §39.38 (relating to Health-Care Providers), including the requirement that providers do not perform or promote

elective abortions, and are not affiliates of entities that perform or promote elective abortions. The term “affiliate” is defined in §39.33(1), and the term “promote” is defined in §39.38(c).

Proposed new §61.33(b) allows the department to contract with providers, for purposes of the BCCS Program, that are not eligible to participate in the TWHP, if the department is unable to locate a sufficient number of TWHP eligible providers in a certain region. Section 61.33(b) sets forth a list of non-exhaustive factors that the department will use when determining whether a certain region has a sufficient number of TWHP eligible providers.

Proposed new §61.33(c) requires BCCS providers to provide the department, or its designee, with all requested information to determine the provider’s compliance with program requirements.

Proposed new §61.33(d) provides that if the department, or its designee, determines that a BCCS provider has failed to comply with the requirements of this section, then the department, or its designee, will disqualify the provider from BCCS.

Proposed new §61.33(e) provides that if a BCCS provider is disqualified, the department, or its designee, will take appropriate action to assist an impacted BCCS client to find an alternative provider, and will recoup any funds paid to the disqualified provider for BCCS performed during the period of disqualification.

FISCAL NOTE

Lesley French, Director, Office of Women’s Health, has determined that for each year of the first five years that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed. The proposed rule does not change current program structure and implementation. The amendment is necessary to comply with Article II, Rider 72 of the 2016-2017 General Appropriations Act.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. French also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. French has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section will be continued access to breast and cervical cancer screening and diagnostic services for eligible, low-income women in Texas.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tori Jones, Mail Code 1923, Breast and Cervical Cancer Services Program, Department of State Health Services, P. O. Box 149347, Austin, Texas 78714-9347 or by email to BCCSProgram@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by Texas Government Code, §531.0055(e), and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

The proposed amendment affects Texas Government Code, Chapter 531; and Texas Health and Safety Code, Chapter 1001.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

[Bold Print and Brackets] = Current language proposed for deletion

Regular Print = Current language

§61.33. Providers.

(a) Health care providers must be eligible to participate in the Texas Women's Health Program (TWHP) in order [serving women with incomes at or below 200% of the federal poverty level are eligible] to apply as providers for and be reimbursed for services provided in the Breast and Cervical Cancer Services (BCCS) Program, except in very limited circumstances. Health care providers must ensure compliance with the requirements set out in Subchapter B, §39.33 of this title (relating to Definitions) and §39.38 of this title (relating to Health-Care Providers). [providers. Eligible applicants include, but are not limited to, community health centers, migrant health centers, local and regional health departments, family planning clinics, community cancer centers, hospitals, primary care programs, and other providers of health services to the target and priority populations.]

(b) Exempted Providers. If the BCCS Program is unable to locate a sufficient number of TWHP eligible providers in a certain region, the BCCS Program may compensate other local providers for the provision of breast and cervical cancer screening and diagnostic services. Methodologies for determining if a certain region has a sufficient number of TWHP eligible providers may include, but are not limited to the:

(1) estimated number of clients in need;

(2) amount of funds available for allocation;

(3) service capacity of the proposed provider for the provision of breast and cervical cancer screening and diagnostic services; and

(4) distance and/or time clients must travel to receive services.

(c) Compliance Information. Upon request, BCCS providers must provide the department or its designees with all information the department or its designees require to determine the provider's compliance with the program requirements.

(d) Provider Disqualification. If, after the effective date of this section, the department or its designee determines that a BCCS provider fails to comply with this section, the department or its designee will disqualify the provider from BCCS.

(e) Recoupment. If a BCCS provider is disqualified, the department or its designee will take appropriate action to:

(1) assist a BCCS client to find an alternative provider; and

(2) recoup any funds paid to the disqualified provider for BCCS services performed during the period of disqualification.